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IN THE

Supreme Court of the United States

OCTOBER TERM, A.D. 1962.

No. 545

CHARLES W. JAMIESON,

Appellant,

vs.

CHICAGO TITLE AND TRUST CO., a corporation of Illinois, and WILLIAM H. AVERY, JOHN W. BAIRD, LAIRD BELL, ALBERT Y. BINGHAM, JOHN D. BINKLEY, CHESTER R. DAVIS, GEORGE H. DOVENMUEHLE, JAMES C. DOWNS, JR., PERCY B. ECKHART, GEORGE P. EDWARDS, NEWTON C. FARR, JOSEPH B. FLEMING, PAUL W. GOODRICH, J. PARKER HALL, HAROLD A. MOORE, LEO J. SHERIDAN, FOREST D. SIEFKIN, GARDNER H. STERN and JOSEPH D. STOCKTON, directors and JOHN WADDELL, its Treasurer,

Appellees.

PETITION FOR REHEARING AND BRIEF IN SUPPORT THEREOF.

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IN THE

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CASE NO. 545

CERTIFICATE

This statement made by the appellant, an attorney-at-law, in the following petition, is to certify that the accompanying petition is made in good faith.

This petition is presented because of the deep interest and concern indicated by inquiries from lawyers both within and outside of Illinois who have been following the progress of this case.

A prominent Philadelphia law firm apparently not satisfied with the mere outline of this case as shown in 179 N.E. 2d 844 requested of appellant a copy of the decree of the trial court, later it asked for a copy of that which transpired in the trial court.

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Feeling that perchance this court has overlooked that which would affect this court's decision, may it please this court to reconsider the far-reaching effect of inadvertently failing to observe a retroactive law and a presently unfortunate disregard for a breach of the due process clause of the Fourteenth Amendment to the Constitution of the United States; also, that a breach of contract is indicated. These three points if not reconsidered could lead to a universal feeling that substantial justice had not been achieved.

The appellate powers of this court were not given by the judicial act. They were given by the Constitution. The exercise of regulatory power by Congress over this court smacks of abuse. This court is able to determine that which is within its province.

6 Cranch. 307 (314).

6. The appellate jurisdiction of the Supreme Court of the United States extends to a final judgment or decree in any suit in the highest court of law or equity wherein is drawn the question of the validity of a statute and the decision is in favor of its validity.

Martin etc. v. *Hunter etc.*, 1 Wheaton, 14 U.S. 304 (321).

Mr. Justice Story (1816) pg. 321. The constitutionality of the appellate jurisdiction of the Supreme Court over the state courts was first settled in the above suit.

Whenever, in pursuance of an honest and actual antagonistic assertion of rights by one individual against another, there is present a question involving the validity of an act of any legislature, State or Federal, and the decision necessarily rests on the competency of the legislature to so enact, the court, in the exercise of its solemn duties, determined whether the act be constitutional or not; but such an exercise of power is the ultimate and supreme function of the courts, Mr. Justice Brewer in *Chicago etc.* v. *Wellman*, 143 U.S. 339 (345) all in the *Muskrat* v. *U. S.* case, 219 U.S. 346.

Where the court has jurisdiction on the ground that the constitutionality of a state law is involved, it may dispose of all questions in the case,

Scott v. *Donald*, 165 U.S. 58.

A federal question treated as open and decided by the State court will be reviewed here without inquiring whether its federal character was adequately called to the attention of the state trial court.

Hill v. Smith, 260 U.S. 592 (594).

The courts of a State cannot change or modify their decisions so as to take away rights which have been acquired by contract and are within the protection of the Federal Constitution.

Mohlker v. New York etc., 197 U.S. 544 (570).

The position in the court below by its decree was in contravention of fundamental public policy and the obvious result error of which it can be charged with a preknowledge.

So far as the case at hand is concerned the Supreme Court is a constitutional court as the judgments to be reviewed involve the exercise of judicial power in a justiciable case touching upon the provisions of the Constitution of the United States namely a part of the Fourteenth Amendment heretofore set forth.

Furthermore, the Supreme Court of the United States was a creature established by that same Constitution namely Art. III, the Judiciary Article; vests the judicial power of the United States in that Court and made it, from the beginning the court of last resort and no power can dictate its function when a direct question involving the Constitution is involved.

The Supreme Court's power to review state court judgments is no longer open to question.

Uniformity of decisions throughout the United States upon all subjects within the purview of the Constitution are important. This necessity did not escape that attention of the "enlightened convention which formed the Constitution".

In Sec. 1 of the Fourteenth Amendment there is found a provision that "no state shall deny to any person within its jurisdiction the equal protection of the laws". The only way individuals could be protected against this kind of action by the federal government would be by extending the protection of the due process clause of the Fifth Amendment to include equal protection of the law. The Supreme Court has intimated the due process of law does include equal protection of the law.

Second etc., v. Employers' Liability Cases, 223 U.S. 1 (52),

Brotherhood v. Union, etc., 240 U.S. 1 (24).

The guaranty of the equal protection of the laws mean the protection of equal laws and forbids class legislation; in this immediate case Sec. 157.52 as against Sec. 157.156 of Chap. 32 of Illinois Business Corp. Act found on pages 1344 and 1371 of Illinois State Bar Association Edition of the Illinois Code; the classification here not resting on reasonable ground. In fact Sec. 157.156 is so unconstitutional as to be unclassifiable.

Lindsay v. Natural etc., 220 U.S. 61 (78),

Plessy v. Ferguson, 163 U.S. 537.

There always has been in the United States resentment against retroactive government action caused by the disturbance of past security. In the case of legislative action people insist its having prospective instead of retrospective

operation. This demand was finally satisfied when the United States Supreme Court extended the due process clause to the protection of the people against retroactive laws,

Smith, Retroactive Laws and Vested Rights, 5 Tex. L.R. 231, 6 Tex. L.R. 409.

Classification under Sec. 157.156 aforesaid as against Sec. 157.52 is invalid,

Ronda etc. v. Laketon, 414 Ill. 313, 110 N.E. 2d 310.

The requirement and purpose of the Fifth and Fourteenth Amendments is to exclude everything that is arbitrary and capricious in legislation affecting the rights of the citizen and his property,

Deal v. Best etc., 129 U.S. 114 (124).

The design of the Constitution of the United States is to give security to contracts, stability to credit and uniformity in those matters among all the States. Willis, Constitutional Law 1936, pg. 636 etc.

As written, the obligation of contracts clause affects only the States. Art. 1, Sec. 10, par. 1. Congress may not pass laws violating the obligation of contract, however, as the Fifth Amendment to the United States Constitution has been interpreted to include this restriction.

The due process clause of the Fourteenth Amendment protects individuals against action by a state judiciary that tends to deprive him of his constitutional rights.

Drivers etc. v. Meadowmoor etc., 312 U.S. 287 (291).

The questions above raised are intrinsically important. Unsubstantial findings of facts by defendants screening reality.

Local rules of practice cannot bar the United States Supreme Court's independent consideration of all substantial federal questions actually determined in earlier stages of the litigation by the court whose final adjudication is brought here for review.

Urie v. Thompson, 337 U.S. 163 (172).

"It is almost doctrinal that the court, even without motion, upon such terms as are just, may at any time relieve a party from a final judgment taken against him where substantial justice requires." "The finality of judgments, even after the term are held inapplicable to void judgments or judgments obtained irregularly or through fraud. In fact, principles are as ample and liberal as those recognized at equity, upon application to vacate decrees where there has been no hearing on the merits."

Freeman on Judgments, 5th Edn. 1925, Vol. 1, Sec. 198.

There are prohibitions against impairments of the obligations of contracts, and there always has been resentment against retroactive governmental action particularly against the disturbance of the feeling of future safety.

Smith on Retroactive Laws and vested rights.

Due process clause protects private interests.

Hodges v. Snyder, 261 U.S. 600.

Great etc. v. Sanburst etc., 287 U.S. 358.

42 Yale L.R. 779.

Freeman, Protection afforded against retroactive operation of an overruling decision, 18 Columbia L.R. 230.

Question concerning construction of state statute should be avoided by Federal Courts unless absolutely necessary to a decision, and should be left to prior determination of state courts. If highest state court will not function, decisive action rests with said federal courts,

Banks et al. v. Kraa (U.S.), 155 F. Supp. 872 (874).

The Supreme Court of Illinois shall file and spread at large on the records of the courts written opinions in all cases submitted to it, such opinions may be examined, in connection with other portions of the record, to ascertain whether the judgment necessarily involves a federal question within the reviewing power of this court,

Truax v. U. S. etc., 108 U.S. 477 (486).

All evidence suppressed by both the trial and the appellate court.

Where the state court fails to pass on the evidence or make findings of facts, the United States Supreme Court is duly bound to examine the evidence for the purpose of determining what facts would be found by the State Court,

Brinkhaust v. O'Neil, 324 U.S. 697 (703).

Suits in equity are reviewed in view of the fact that a court of equity has the power where justice may thereby be done to grant relief although they have resorted to the wrong remedy,

Central etc. v. Cambria etc., 210 Fed. 696 (affirmed).

Cases may be heard *de novo* especially as to evidence.

A chance to produce evidence would also certainly put a new light on the situation.

Contrary to the first paragraph of the decree of the trial court, there was no oral argument in case No. 60 S 9097.

Appellant has a right to have reviewed a wrong decision by the courts below even though there was an affirmance by the appellate court below,

De Parcq v. *Liggett etc.*, 81 F. 2d 777,
Fredrickson v. *Repard*, 231 Fed. 882.

In the Supreme Court of the United States flexibility is especially essential,

Mr. Chief Justice Hughes.

In allowing an amendment establishing the jurisdiction, the court may consider the merits,

Davis v. *McFarland*, 273 U.S. 754.

Constitutional construction must be considered and concluded as it is here absolutely necessary to decision,

U. S. v. *Petrillo*, 332 U.S. 1.

General relaxation of the obligation of "*stare decisis*" would foster commercial anarchy; referring to the *Muhlke* case below by Wilbur Larremore in Harv. L.R. 182 (189), 197 U.S. 544.

Stare decisis will well cover the case at bar. Any contrary decision in this case or decision supporting the lower courts will operate prospectively only.

The case at bar is in line with the understandable concern that the Supreme Court has in the application of law in the accent of policy of a public or national nature and the applicant feels his responsibility in aiding this court in reaching into the realities of situations where corporations express their ambitions in devious, subtle nuances.

In support of appellant's jurisdictional statement and answer may it be said that this appeal is important in the interests of the law and the appropriate settlement of questions of general importance wherein the lower courts have thus far failed. This exhortation is not in settlement of a mere private interest.

The court of last resort on a rehearing, may recede from former stand and declare the law to be otherwise.

Mantle etc. v. Knapp etc., 81 F. 2d 428.

This rule is one of the public policy, of practice and procedure.

Pacific etc. v. Hoit, 291 Fed. 396 (cert. den.),
International etc. v. Bethlehem etc., 192 F. 2d 304.

Wherefore appellant requests a reconsideration of this case and that a rehearing be indulged in.

Respectfully submitted and certified to

Appellant, pro se, attorney.

APPENDIX

AUTHORITIES

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